

the IRS, provides a Notice of Intent to Use IRS Income Tax Refund Offset which will state that:

(a) Debtor owes FEMA an amount due; and

(b) The debt is past due; and

(c) Unless the debt is repaid within 65 days of the date of FEMA's mailing, the Notice of Intent to use IRS Income Tax Refund Offset, FEMA intends to collect the debt by requesting the IRS to take offset to reduce a Federal tax refund by the amount of the debt and all accumulated interest and other charges; and

(d) Debtor has an opportunity to present evidence, within 65 days of mailing of the Notice of Intent to Use IRS Income Tax Refund Offset, that all or a part of the debt is not due. A debtor wishing to present evidence shall send it to the Deputy Agency Collections Officer, Office of Financial Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; and

(e) Debtor may arrange to inspect and copy records relating to the debt by mailing a request to the Deputy Agency Collections Officer at the address above; and

(f) If the debtor submits evidence described in paragraph (d) of this section then the debt shall not be referred to the IRS until such evidence is fully considered by the Agency Collections Officer (ACO). If no reply is received from the debtor within 65 days of mailing of the notice, FEMA may refer the debt to the IRS after reviewing the file and determining that the debt is due; and

(g) The debt will be referred to the IRS only after the ACO, after reviewing the debt collection files and the debtor's evidence, if any, has determined that the debt is due. If the debtor has submitted evidence in accordance with paragraph (f) of this section, FEMA shall notify the debtor of the ACO's final determination.

(h) If the debtor has questions concerning the debt or procedures being used, contact may be made with a specified FEMA employee whose work address and telephone will be provided in the Notice of Intent to Use IRS Income Tax Refund Offset.

[57 FR 54716, Nov. 20, 1992]

#### **§ 11.64 Review within Federal Emergency Management Agency.**

(a) *Notification by debtor.* A debtor receiving Notice of Intent to Use IRS Income Tax Refund Offset has the right to present evidence and arguments within 65 days of mailing of the Notice of Intent to Use IRS Income Tax Refund Offset that all of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for review of evidence to the Deputy Agency Collections Officer at the address provided in § 11.63(d); and

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable; and

(3) Include in the request any documents which the debtor wishes to be considered, or state that additional information will be submitted within the remainder of the 65-day period.

(b) *Submission of evidence.* The debtor may submit evidence that all or part of the debt is not past-due or legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within the 65-day period may result in a referral of the debt to the IRS with only a review by the ACO that the records show that the debt is actually due FEMA.

(c) *Review of the evidence.* FEMA will consider all evidence, reasons and arguments submitted by the debtor, if any, relating to the debt. Within 30 days of receipt of debtor's evidence, if feasible, FEMA will notify the debtor whether FEMA has sustained, amended or canceled its determination that the debt is past-due or legally enforceable, in whole or in part.

(1) Attached to the notification will be a written decision setting forth the supporting rationale for the determination.

(2) FEMA will complete its review and determination and mail to the debtor the notification within 30 days of receipt of debtor's submission of evidence and arguments, if feasible.

(3) The ACO may delegate his or her responsibilities in reviewing the files

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and evidence and for making determinations under this section to member(s) of his or her staff.

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### § 11.65 Stay of offset.

If the debtor notifies FEMA that he or she is exercising rights described in § 11.64 and submits evidence within time limits specified in § 11.64(b), any notice to the IRS will be stayed until the issuance of a written decision which sustains or amends FEMA's original decision.

[57 FR 54717, Nov. 20, 1992]

## Subpart D—Personnel Claims Regulations

AUTHORITY: 31 U.S.C. 3721.

SOURCE: 50 FR 8112, Feb. 28, 1985.

### § 11.70 Scope and purpose.

(a) The Director, Federal Emergency Management Agency (FEMA), is authorized by 31 U.S.C. 3721 to settle and pay (including replacement in kind) claims of officers and employees of FEMA, amounting to not more than \$25,000 for damage to or loss of personal property incident to their service. Property may be replaced in-kind at the option of the Government. Claims are payable only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper, the approving authority will consider the type and quantity of property involved, circumstances attending acquisition and use of the property, and whether possession or use by the claimant at the time of damage or loss was incident to service.

(b) The Government does not underwrite all personal property losses that a claimant may sustain and it does not underwrite individual tastes. While the Government does not attempt to limit possession of property by an individual, payment for damage or loss is made only to the extent that the possession of the property is determined to be reasonable, useful, or proper. If individ-

uals possess excessive quantities of items, or expensive items, they should have such property privately insured. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim under this subpart.

### § 11.71 Claimants.

(a) A claim pursuant to this subpart may only be made by: (1) An employee of FEMA; (2) a former employee of FEMA whose claim arises out of an incident occurring before his/her separation from FEMA; (3) survivors of a person named in paragraph (a) (1) or (2) of this section, in the following order of precedence: (i) Spouse; (ii) children; (iii) father or mother, or both or (iv) brothers or sisters, or both; (4) the authorized agent or legal representative of a person named in paragraphs (a) (1), (2), and (3) of this section.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

### § 11.72 Time limitations.

(a) A claim under this part may be allowed only if it is in writing, specifies a sum certain and is received in the Office of General Counsel, Federal Emergency Management Agency, Washington, DC 20472: (1) Within 2 years after it accrues; (2) or if it cannot be filed within the time limits of paragraph (a)(1) of this section because it accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after the claim accrues, when the claimant shows good cause, the claim may be filed within 2 years after the cause ceases to exist but not more than 2 years after termination of the war or armed conflict.

(b) For purposes of this subpart, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence.

### § 11.73 Allowable claims.

(a) A claim may be allowed only if: (1) The damage or loss was not caused